IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.212 OF 2005
IN
INSOLVENCY PETITION NO.100 OF 2002

Shri Prakash N.Lilwani ....Appellant
V/s.
Mr.Inder Raj Kapoor & Ors. ....Respondents

WITH

APPEAL (LODGING) NO.213 OF 2005
IN
INSOLVENCY PETITION NO.100 OF 2002

Shri Sunil Srichand Achantani ....Appellant
V/s.
Mr.Inder Raj Kapoor & Ors. ....Respondents

Mr.Shailesh Shah i/b Mr.J.S. Chandnani for the Appellant.
Mr.Kishor Jain i/b Ms.Mamta Shah for Respondent No.1.
Mrs.Pradhan - Ist Master Official Assignee.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 29TH MARCH, 2005.

P.C. :

1. These Appeals are against the order of the learned single Judged making the report of the Official Assignee absolute in terms of prayers (a) to (d) thereof thereby setting aside the agreements for sale dated 9th October, 2002 and 12th October, 2002

respectively executed between the insolvent/original judgment debtor i.e. Respondent No.2 on the one hand and the Appellants on the other in respect of flat Nos.103 and 102 in Kalyan, Thane, ordering the Official Assignee to take forcible physical possession thereof ; directing Vallabh Tower Co-operative Housing Society Ltd. in which the said flats are situated to cancel the names of the Appellants on its records and to retain the name of Respondent No.2 and to note the lien of the Official Assignee in respect thereof. The Appellants have also been directed to lodge the original agreements with the Official Assignee.

2. The impugned order warrants no interference. The learned Judge has in a detailed and if we may say with great respect, well considered order set out the reasons for making the report of the Official Assignee absolute.

3. There is no dispute regarding the status of Respondent No.2 as an insolvent. It is also admitted that the insolvency notice was issued on 1st July, 2002 on the basis of an award dated 23rd January, 2002. The notice was served on 22nd July, 2002. The act of insolvency was complete on the expiry of 35

days i.e. on 27th August, 2002. The insolvency petition was filed in this Court on 2nd September, 2002 and the order of adjudication was passed on 1st July, 2003.

4. The learned Judge has correctly come to the conclusion that the said transactions as well as the nature of the transactions were not bona-fide transactions for a value and without notice. Amongst various reasons set out in the impugned order, it is pertinent to note the fact that the payment in respect of the said transactions is alleged to have been made in various instalments. There are no details in this regard whatsoever. There is no proof of payments having actually been made. Nor was Mr.Shah, the learned counsel appearing on behalf of the Appellant able to indicate anything before us. Just two months after the alleged transactions, the Appellants in both the Appeals entered into leave and licence agreements in respect of the said flat with the wife of Respondent No.2. The nature of both transactions in the above Appeals is identical in material aspects. No reasons whatsoever have been furnished why the Appellants entered into the said transactions. The learned Judge was therefore justified in considering the transaction was not bona-fide.

5. In the circumstances, the Appeals are dismissed.